# METROPOLITAN AREA PLANNING COMMISSION

#### **MINUTES**

## May 6, 2010

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, May 6, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; David Dennis; Darrell Downing; David Foster (In @1:32 P.M.); Bud Hentzen; Hoyt Hillman; Joe Johnson; Don Klausmeyer; Ronald Marnell; John W. McKay Jr.; and Don Sherman (In @1:45 P.M.). M.S. Mitchell and Shawn Farney were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; and Maryann Crockett, Recording Secretary.

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**1.** Approval of the April 15, 2010 MAPC meeting minutes:

**MOTION:** To approve the April 15, 2010 minutes, as amended.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (10-0).

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**FOSTER** (In @1:32 P.M.)

#### 2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

## SUBDIVISION CASE DETAILS

2-1. <u>SUB 2010-06: Revised One-Step Final Plat -- THE MOORINGS PLAZA III ADDITION</u>, located north of 45th Street North (extended) and west of Meridian Avenue.

**Note:** This is unplatted property located within the City. A portion of the site has been approved for a zone change (ZON 2009-18) from SF-5 Single-Family Residential to MF-18 Multi-family Residential and GO General Office. A Protective Overlay was also approved for this site addressing architectural controls, landscaping, lighting, setbacks, building height, screening, and permitted uses.

#### **STAFF COMMENTS:**

- A. <u>City of Wichita Water Utilities Department</u> requires a guarantee for the extension of sewer (mains and laterals) and water (transmission and distribution mains) to serve all the lots being platted.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. <u>City Stormwater Engineering</u> has approved the applicant's drainage plan and lot grading plan.
- D. The Applicant shall guarantee the paving of the proposed streets.

- E. As the plat consists of commercial and multi-family residential lots abutting non-arterial streets, the Subdivision regulations require sidewalks along the street frontage of Pierport and Harborlight.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay and its special conditions for development on this property.
- H. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- I. The applicant shall submit a covenant which provides for three (3) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. <u>GIS</u> has approved the plat's street names.
- K. A cross-lot circulation agreement is needed to assure internal vehicular movement between Lots 25-28, Block 2.
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how

this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. <u>Westar Energy</u> has requested easements. If requested by the applicant, they will be waived if established by separate instrument to accommodate street light installation at the design phase.
- U. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: <a href="mailto:cholloway@wichita.gov">cholloway@wichita.gov</a>). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

HILLMAN moved,	JOHNSON	seconded	the motion,	and it carried	(11-0)

**2-2. SUB 2010-22: One-Step Final Plat -- YSIDRO 2nd ADDITION**, located on the east side of Broadway, north of MacArthur Road.

**Note:** The site has been approved for a zone change (ZON 2009-36) from SF-5 Single-family Residential to LI Limited Industrial and GC General Commercial. A Conditional Use for Wrecking/Salvage was also approved for the east portion of the site.

## **STAFF COMMENTS:**

- A. <u>City of Wichita Water Utilities Department</u> advises that water and sewer services are available to serve the site.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. <u>City Stormwater Engineering</u> has requested a floodway reserve platted for the portion of the site below an elevation 1276.5 NAVD 88 datum. A minimum pad elevation of 1278.5 is needed. The floodway reserve may be waived if the applicant can provide compensatory storage for the floodplain displaced.
- D. <u>Traffic Engineering</u> has approved the access controls. The plat proposes two openings along Broadway.
- E. <u>Traffic Engineering</u> requests 10 feet of additional right-of-way along Broadway. The Access Management Regulations requires a 60-foot half-street right-of-way width along urban arterials.

- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The note regarding zoning needs corrected to reflect GC zoning on the west side of the property and LI zoning on the east.
- H. Approval of this plat requires a waiver of the lot depth to width ratio of the Subdivision Regulations. The Subdivision Regulations state that the maximum depth of all non-residential lots shall not exceed three times the width. The Subdivision Committee recommends a modification of the design criteria in Article 7 of the Subdivision Regulations as if it finds that the strict application of the design criteria will create an unwarranted hardship; the proposed modification is in harmony with the intended purpose of the subdivision regulations and the public safety and welfare will be protected.
- I. <u>County Surveying</u> advises that on the north line of the plat the dimension 1314.01' needs to be moved to the south side of said line, and dimension 1364.01' needs to be moved to the north side of said line.
- J. <u>County Surveying</u> advises that there are two legends with the same symbols meaning different monuments.
- K. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion

and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: <a href="mailto:cholloway@wichita.gov">cholloway@wichita.gov</a>). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (11-0).

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## 3. PUBLIC HEARING – VACATION ITEMS

3-1. VAC2010-06: City request to vacate a portion of a Railroad easement

**OWNER/APPLICANT**: House of Schwan (owner/applicant) / Young & Associates, c/o Chris

Young (agent)

**LEGAL DESCRIPTION:** Generally described as a 50-foot (x) 16-foot, east portion of a platted 60-

foot railroad easement, located on the west side of Lot 2, Comotara

Industrial Park 2<sup>nd</sup> Addition.

**LOCATION:** Generally located east of Rock Road, south of 37th Street North, on the

east side of Comotara Street. (WCC #II)

**REASON FOR REQUEST:** Vacate undeveloped railroad easement for future development.

**CURRENT ZONING:** Subject property and all adjacent and abutting properties are zoned LI

Limited Industrial ("LI").

The applicants are requesting consideration to vacate the described portion of the platted railroad easement. The easement has not been developed. The applicant proposes to place a 'chiller' into the described portion of the easement. The railroad easement is not referenced in the plattor's text. The applicant has provided a signed protective covenant that references "...a railroad spur track, public dock and related improvements...all of which are owned by the City of Wichita ('City') and are available for use by the public." The City of Wichita needs to agree to vacate the described portion of the railroad easement. The applicant needs to provide letters from the other property owners that have signed the protective covenant, agreeing to the vacation of the described portion of railroad easement. The railroad easement (on some properties also platted as a reserve = North Point Industrial Park Addition, recorded May 6, 1981) has been vacated on several properties in this industrial area, either by replat (Lots 15, 16, 17 and part of 14, Comotara Industrial park 5<sup>th</sup> Addition, were replatted into Lots 1 & 2, Mediterranean Plaza Addition, recorded March 16, 1988) or by vacation (VAC2001-00033). The vacation will not change the conditions of the protective covenant. There are no known plans for the expansion of the Missouri Pacific Rail Road tracks. There appears to be no utilities in the easement. The Comotara Industrial Park 2<sup>nd</sup> Addition was recorded December 15, 1977.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works, Water & Sewer, Storm Water, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted railroad easement with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  - 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 15, 2010, which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the described portion of platted railroad easement and the public will suffer no loss or inconvenience thereby.
  - 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Provide Staff with a contingent dedication of railroad easement (with original signatures) dedicated by separate instrument, which will revert the described portion of the railroad easement back to railroad easement at such time that the rail spur's track and services extends to or through the applicant's property. At such time that this easement is activated, as described, the applicant shall remove the 'chiller' (equipment) from the activated easement at their own expense; with the exception of the 'chiller' no structural encroachments are allowed into the described vacated portion of the railroad easement. The contingent dedication will go with the Vacation Order to City Council for final action and subsequent recording with the Register of Deeds.
- (2) Provide Planning with letters from the other properties that have signed the protective covenant, agreeing to the vacation of the described portion of the railroad easement.
- (3) The City of Wichita needs to agree to vacate the described portion of the railroad easement.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (5) All improvements shall be according to City Standards and at the applicants' expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

#### SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

(1) Provide Staff with a contingent dedication of railroad easement (with original signatures) dedicated by separate instrument, which will revert the described portion of the railroad easement back to railroad easement at such time that the rail spur's track and services extends to or through the applicant's property. At such time that this easement is activated, as described, the applicant shall

remove the 'chiller' (equipment) from the activated easement at their own expense; with the exception of the 'chiller' no structural encroachments are allowed into the described vacated portion of the railroad easement. The contingent dedication will go with the Vacation Order to City Council for final action and subsequent recording with the Register of Deeds.

- (2) Provide Planning with letters from the other properties that have signed the protective covenant, agreeing to the vacation of the described portion of the railroad easement.
- (3) The City of Wichita needs to agree to vacate the described portion of the railroad easement.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (5) All improvements shall be according to City Standards and at the applicants' expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

KLAUSMEYER moved, HENTZEN seconded the motion, and it carried (11-0).

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## 3-2. VAC2010-07: City request to vacate platted easements

**OWNER/APPLICANT:** Terradyne Residential LLC (owner)/Craig Smith (applicant)

**AGENT:** Poe and Associates, c/o Bill Fox

**LEGAL DESCRIPTION:** The 5-foot wide platted maintenance access easements located on Lots

14, 15, 16, 17, 18, & 19, Block 2, Terradyne West Addition, Wichita,

Sedgwick County, Kansas.

**LOCATION:** Generally located between I-35 and Central Avenue, west of 159<sup>th</sup> Street

East, north of Sharon Lane (WCC #II)

**REASON FOR REQUEST:** Associated with proposed boundary shifts

**CURRENT ZONING:** The subject property and all abutting and adjacent eastern properties are

zoned SF-5 Single-family Residential ("SF-5")

The applicant proposes to vacate the platted 5-foot wide maintenance access easements located along the interior side yards of the described lots. Per the plattor's text, the described platted maintenance access easement(s) is to be used for "...pedestrian emergency access, construction, maintenance, the extension of footing and a 2-foot overhang of the structure on the adjacent lot." According to the GIS utilities' map there are no manholes, water or sewer lines in the described easement. Comments from franchised utilities have not been received and are needed to determine if they have utilities in the easement. The

applicant proposes boundary shifts on the described lots, thus the need to remove the platted easement. The Terradyne West Addition was recorded with the Register of Deeds December 12, 2006.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works, Water & Sewer, Storm Water, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described platted maintenance access easements with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  - 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 15, 2010, which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the described platted maintenance access easements and the public will suffer no loss or inconvenience thereby.
  - 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Provide Staff with additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
- (3) Provide Public Works with the new square footage for each of the reconfigured lots to address the redistribution of the funds involved in the specials (water, sewer and drainage) for the properties. Must be provided prior to the case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

#### SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

(1) Provide Staff with additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by any utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
- (3) Provide Public Works with the new square footage for each of the reconfigured lots to address the redistribution of the funds involved in the specials (water, sewer and drainage) for the properties. Must be provided prior to the case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

 $\label{eq:KLAUSMEYER} \textbf{MENTZEN} \ \text{seconded the motion, and it carried (11-0)}.$ 

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## **PUBLIC HEARINGS**

4. <u>Case No.: ZON2010-13</u> - Legacy Bank (applicant/owner), Krehbeil Architecture (agent) Request Amendment to PO #'s 63, 70, 113, and 117, on LC Limited Commercial zoned property on property described as;

Parcel 1: The South 57.5 feet of Lot 1, Block 1, Kings Maple Street 3rd Addition to Wichita, Sedgwick County, Kansas.

Parcel 2: The North 48.5 feet of Lot 1, Block 1, University and Ridge Addition to Wichita, Sedgwick County, Kansas, generally located between Maple Street and University Avenue and between Ridge Road and Summitlawn Drive.

**BACKGROUND:** The applicant proposes to amend Protective Overlays (PO) #s 63, 70, 113, and 117 on the subject site. The subject site is the undeveloped remnants, left over from the final platting of the Pizza Hut and Applebee developments, which abut the site's south and north sides. The site's current LC Limited Commercial ("LC") zoning will remain in place. The following are the proposed amendments.

Amend provisions 1, 2, 3, 4, & 6 of Protective Overlay (PO) #63 of Z-3350 as follows: Current provision #1: No off-site or portable signs shall be permitted on the property. No building advertising signs shall be permitted on the face of any building. Requesting; No building advertising signs shall be permitted along the face of any building or along any street frontage that faces or is across the street from any property that is in a residential zoning district, while retaining the prohibition on off-site or portable signs.

Current provision #2: Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 14 feet. Requesting; Light poles shall be limited to a maximum height of 20 feet, while retaining the rest of the provision.

Current provision #3: Outdoor speakers and sound amplification systems are not permitted. Requesting: Outdoor speakers and sound amplification systems shall not be permitted except for drive-thru and order boards.

Current provision #4: No buildings shall exceed one story in height with a maximum building height of 25 feet. Requesting; No buildings shall exceed one story in height with a maximum building height of 35 feet.

Current provision #6: A restaurant with a drive in or drive through facilities is a prohibited use. Requesting; A restaurant with a drive in or drive through facilities be allowed, while retaining the rest of the prohibited uses.

Amend provisions B, C, D & E of Protective Overlay (PO) #70 for Z-3360 as follows:

Current provision B: Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 14 feet. Requesting; Light poles shall be limited to a maximum height of 20 feet, while retaining the rest of the provision.

Current provision C: Outdoor speakers and sound amplification systems are not permitted. <u>Requesting:</u> Outdoor speakers and sound amplification systems shall not be permitted except for drive-through and order boards.

Current provision D: No buildings shall exceed one story in height with a maximum building height of 25 feet. Requesting; No buildings shall exceed one story in height with a maximum building height of 35 feet.

Current provision E: A 6-foot high masonry wall shall be constructed along parallel to the east and south property line and located 20-feet west and north of the east and south property lines, respectively. A 20-foot landscape buffer shall be provided adjacent to the east and south property lines on the east and south sides of the masonry wall. Requesting; A 6-foot high masonry wall shall be constructed parallel to the east property line, where property in a residential zoning district shall be provided adjacent to the entire length of the east property line and a 20-foot landscape street yard shall be provided adjacent to the east property line on the east side of the masonry wall.

Amend provisions B & D of Protective Overlay (PO) #113 for ZON2002-00023 as follows:

Current provision B: Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 14 feet. Requesting; Light poles shall be limited to a maximum height of 20 feet, while retaining the rest of the provision.

Current provision D: No buildings shall exceed one story in height with a maximum building height of 25 feet. Requesting; No buildings shall exceed one story in height with a maximum building height of 35 feet.

Amend provisions B, C & D of Protective Overlay (PO) #117 ZON2002-00056 as follows:

Current provision B: Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 14 feet. Requesting; Light poles shall be limited to a maximum height of 20 feet, while retaining the rest of the provision.

Current provision C: Outdoor speakers and sound amplification systems are not permitted. Requesting; Outdoor speakers and sound amplification systems shall not be permitted except for drive-through and order boards.

Current provision D: No buildings shall exceed one story in height with a maximum building height of 25 feet. Requesting; No buildings shall exceed one story in height with a maximum building height of 35 feet.

Precedent for the requested amendments has been established by the MAPC and City Council with the approval of ZON2008-00066 & PO #228. This applied to the current Applebee's development abutting the north side of the site. PO #228 allowed: (1) Light poles shall be limited to a maximum height, including the base of the light pole, of 20 feet. Light poles shall not be located within any setbacks; (2)

Outdoor speakers and sound amplification systems shall not be permitted except for drive-through and order boards; (3) No buildings shall exceed one story in height with a maximum building height of 35 feet. The requested amendment to PO #70's provision E dealing with landscaping, eliminated the no longer needed masonry wall along the site's south side where it abuts the LC zoned Pizza Hut development.

The surrounding area is characterized by a mixture of single-family residences, commercial uses and undeveloped LC zoned property. The properties located to the east, across Summitlawn Drive, are zoned SF-5 Single-family Residential ("SF-5") and are developed with single-family residences built in the mid 1950s – mid 1960s. This single-family residential subdivision is the oldest existing development in the area. The subject property was originally platted as part of this single-family residential subdivision; see case history. The property located west of the site, across Ridge Road, is zoned LC with a Community Unit Plan (CUP) overlay, DP-37, and is developed as a Lowes (built 1998) building supply center. The property abutting the north of the site is the already mentioned Applebee's development, which is zoned LC with PO #228. The property abutting the north side of the site is a Pizza Hut Bistro restaurant built in 2005 and zoned LC with POs #113 and 117. Protective Overlays #113 and #117 have not been amended. The Maple - Summitlawn – University – Ridge block was rezoned SF-5 to LC during the years 1992-2002.

<u>CASE HISTORY:</u> The subject site was originally platted as part of the single-family residential Westerlea Village subdivision, recorded August 11, 1949. It was subsequently rezoned to what is now LC zoning, subject to replatting and the provisions of POs #63, 70, 113, and 117. The subject site is the undeveloped remnants, left over from the final platting of the Pizza Hut and Applebee developments, which abut the site's south and north sides. The subject properties are: The south 57.5 feet of Lot 1, Block 1, Kings Maple Street 3rd Addition and the north 48.5 feet of Lot 1, Block 1, University and Ridge Addition, all in Wichita, Sedgwick County, Kansas.

### ADJACENT ZONING AND LAND USE:

NORTH: LC Applebee sit-down restaurant

SOUTH: LC Pizza Hut Bistro sit-down restaurant

EAST: SF-5 Single family residences

WEST: LC Lowes big box building supply center, retail

<u>PUBLIC SERVICES:</u> The subject property has frontage onto Ridge Road. Ridge Road is a four-lane principal arterial, with turn lanes, and a raised, full curbed median strip. Summitlawn Drive, which abuts the east side of the subject property, is a two-lane, paved residential street. The site has no access onto Sumittlawn, via complete access control on the recorded plats. The 2030 Transportation Plan indicates no change to the status of any of these roads. Available traffic counts in the area show approximately 23,700 average trips per day on this section of Ridge Road and Maple Street. All utilities are available to the subject sites.

<u>CONFORMANCE TO PLANS/POLICIES:</u> The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the area as appropriate for "Local Commercial" development. The area's existing developments, their base LC zoning and their Protective Overlays conform to the Local Commercial category, as does the proposed amendments to the subject site's POs, which matches all or parts of the abutting north and south properties' POs.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the following amendments to the provisions of Protective Overlays #s 63, 70, 113, and 117 be APPROVED as follows:

Amended provisions 1, 2, 3, 4, & 6 of PO #63:

1. No building advertising signs shall be permitted along the face of any building or along

- any street frontage that faces or is across the street from any property that is in a residential zoning district. No off-site or portable signs permitted.
- 2. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 20 feet. No light poles shall be located in the eastern setbacks.
- 3. Outdoor speakers and sound amplification systems shall not be permitted except for drive-through and order boards. No outdoor speakers and/or sound amplification systems shall be located in the eastern setbacks.
- 4. No buildings shall exceed one story in height with a maximum building height of 35 feet.
- 6. A restaurant with a drive in or drive through facilities is allowed (while retaining the rest of the prohibited uses).

# Amend provisions B, C, D & E of PO #70:

- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 20 feet. No light poles shall be located in the eastern setbacks.
- C. Outdoor speakers and sound amplification systems shall not be permitted except for drive-through and order boards. No outdoor speakers and/or sound amplification systems shall be located in the eastern setback.
- D. No buildings shall exceed one story in height with a maximum building height of 35 feet.
- E. A 6-foot high masonry wall shall be constructed parallel and along the entire length of the east property line and a 20-foot landscape street yard shall be provided adjacent to the east property line (not in public right-of-way) on the east side of the masonry wall.

## Amend provisions B & D of Protective Overlay (PO) #113:

- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 20 feet. No light poles shall be located within the eastern setback.
- D. No buildings shall exceed one story in height with a maximum building height of 35 feet.

#### Amend provisions B, C & D of PO #117:

- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential zoning areas. Light poles shall be limited to a maximum height of 20 feet. No light poles shall be located within the eastern setback.
- C. Outdoor speakers and sound amplification systems shall not be permitted except for drive-thru and order boards. No outdoor speakers and/or sound amplification systems shall be located within the eastern setback.
- D. No buildings shall exceed one story in height with a maximum building height of 35 feet.

# This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of single-family residences, commercial uses and undeveloped LC zoned property. The properties located to the east, across Summitlawn Drive, are zoned SF-5 Single-family Residential ("SF-5") and are developed with single-family residences; built mid 1950s – mid 1960s. This single-family residential subdivision is the oldest existing development in the area. The subject properties were originally platted as part of this single-family residential subdivision; see case history. The property located west of the site, across Ridge Road, is zoned LC with a Community Unit Plan (CUP) Overlay, DP-37, and is developed as a Lowes (built 1998) building supply center. The property abutting the north of the site is the already mentioned Applebee development, which is zoned LC with PO #228. The property abutting the north side of the site, a Pizza Hut Bistro restaurant built in 2005 that is zoned LC with POs #113 and 117. Protective Overlays #113 and 117 have not been amended. The Maple - Summitlawn – University – Ridge block was rezoned SF-5 to LC during the years 1992- 2002.

- 2. The suitability of the subject property for the uses to which it has been restricted: The subject property could be developed as currently zoned with the provisions of its current Protective Overlays, with the exception being that there is no need for a masonry wall between the subject site and the south, abutting LC zoned Pizza Hut Bistro.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Development of the last existing undeveloped property (the subject site) in this block of commercial development, per the provisions of the amended POs will be an improvement over the vacant subject site, with its gap between its neighbors' masonry wall and landscaping.
- 4. <u>Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:</u> The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the area as appropriate for "Local Commercial" development. The area's existing developments, their base LC zoning and their Protective Overlays conform to the Local Commercial category, as does the proposed amendments to the subject site's POs, which matches all or parts of the abutting north and south properties' POs.
- 5. <u>Impact of the proposed development on community facilities:</u> Detrimental impacts on traffic should be minimized through the recorded plats' limiting access to the subject site to an arterial street and through cross lot access. Other community facilities should not be adversely impacted.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He removed the following language that "no light poles will be located in the eastern setbacks" on item #1 of Protective Overlay #63 and item B on Protective Overlay #113, noting that these overlays fronted Ridge and ended in the middle of the subject site and thus there was no need for language he was removing. He said DAB V approved the request as amended and added a provision that there be no trash service at the site before 8:00 a.m. He noted to the DAB that this trash service provision did not exist for the abutting Pizza Hut or Applebee sites.

**DENNIS** he said this use makes it more intense for the residences that live east of the site by adding more lighting and sound amplification. He asked what the adjacent homeowners had to say about the request.

**LONGNECKER** commented that he hasn't had any calls protesting the requested amendments and no one spoke at the DAB on the issue.

**HILLMAN** asked where the speakers will be located; which way will they face.

**LONGNECKER** responded that they will be at least 20 feet from the property line.

**FOSTER** noted a typographical error on page 4 of the Staff Report. He also suggested changing the language on page 5, item E to clarify landscaping and/or building setbacks.

**LONGNECKER** said the buffer wall will be located 20 feet from property line as part of the landscape; that it will not add additional footage. He agreed to amend the wording of provision E.

**DUSTIN RANDOLPH, KREHBEIL ARCHITECTURE, REPRESENTING LEGACY BANK** said their intent is to have the site match the standards of the abutting north and south properties. In response to Mr. Hillman's question regarding the speakers, he said the speaker board will face southwest away from the residential area. He requested that the trash pickup provision be removed.

**SHERMAN** (Arrived at 1:45 P.M.)

MIKE CARNEY, PIZZA HUT asked where the ingress/egress into the business will be located.

**LONGNECKER** said the site's ingress/egress will be off of Ridge Road since there is complete access control onto Summitlawn.

**MOTION:** To approve subject to staff recommendation and the language change to provision E on page 5.

**JOHNSON** moved, **DENNIS** seconded the motion, and it carried (12-0).

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**Case No.: ZON2010-14** - William MacPherson (owner) Request City zone change from B Multi-Family Residential to LI Limited Industrial on property described as;

S 2 FT LOT 89 - ALL LOT 91 & N 10 FT LOT 93 NORTH PARK ADDITION, generally located south of 14th Street North, west of Santa Fe Street (1441 North Santa Fe Street).

**BACKGROUND:** William MacPherson owns .11 acre located at 1441 North Santa Fe Street that is currently zoned B Multi-family Residential ("B"). Mr. MacPherson bought the property in 2003, obtained a building permit for a warehouse on June 24, 2003, that was final inspected on December 23, 2003. Additional electrical and plumbing permits have been granted since that time. The property was zoned LI Limited Industrial ("LI") when it was purchased by Mr. MacPherson. The warehouse is currently leased and has a number of vehicles parked and/or stored outside.

One of the recommendations contained in the *Midtown Neighborhood Plan* (approved May 2004) was the voluntary rezoning of properties whose zoning was more intense than that required for the actual use. Apparently in 2004, when the Midtown down zoning (DR2004-00009) initiative was undertaken, Mr. MacPherson's property was re-zoned from LI to B. Commissioner's may remember that in all three of the previous neighborhood plans that involved mass rezoning, property owners were given the opportunity to opt out. Mr. MacPherson's name was on the notification list; however, for whatever reason, this property was down zoned to the B district. Multi-family zoning does not properly serve a lot that is developed with a warehouse. He recently received a notice of violation from the Office of Central Inspection and visited the planning department to determine his options to restore the property's LI zoning.

Section V-A.1 of the Unified Zoning Code (UZC) specifies that the Metropolitan Area Planning Commission (MAPC) or the governing body may initiate any action permitted by the UZC. On March 18, 2010, based upon the authority found in Sec. V-A.1, planning staff asked the MAPC to initiate a request to rezone 1441 North Santa Fe from B to LI. By a vote of 11-0, the MAPC authorized staff to initiate an application for the MAPC to consider.

Properties located north and south of the application area for the entire half-block face are zoned LI, except for 627 East 14<sup>th</sup> Street that is zoned B. The ownership located immediately to the north appear to be used for outside storage, then north of that are residences built circa 1907 to 1920 that front either Santa Fe or 14<sup>th</sup> Street. The lot located immediately to the south of the subject site has a residence, built in 1907, and owned by the same company that owns the warehouse and outside storage located further to the south. (Residences located on lots zoned LI are nonconforming uses per the current zoning code.) Property located to the east, across Santa Fe, is developed with elevated railroad tracks. Properties located west of the site, across an alley, are zoned TF-3 Two-family Residential ("TF-3").

J.B. Holdings, Inc. owns all of the lots located south and the lot or ownership located immediately north of the subject tract. Daniel J. Phillippi owns all of the lots located further north of the lot immediately north of the subject tract to 14<sup>th</sup> Street, as well as the lots located east of the alley that front 14<sup>th</sup> Street. Thus, of the three property owners that own the half-block fronting Santa Fe, the subject property is one of two that are zoned LI.

**CASE HISTORY:** A 1937 zoning map shows the half-block on which this property is located to be zoned E Light Industrial (LI Limited Industrial in our present code). The property is platted as the North Park Addition, recorded in 1886, and the legal description for the application area is: the south two feet of Lot 89, all of Lot 91 and the north 10 feet of Lot 93, North Park Addition.

## ADJACENT ZONING AND LAND USE:

NORTH: LI Limited Industrial, B Multi-family Residential; outside storage, residences

SOUTH: LI Limited Industrial; residence, warehouse EAST: LI Limited Industrial; elevated railroad track

WEST: TF-3 Two-family Residential; single-family residences

<u>PUBLIC SERVICES</u>: For the block containing the application area, Santa Fe is a sand and gravel street with 60 feet of right-of-way at its widest point. Due to the elevated railroad, Santa Fe narrows to less than 60 feet in this block segment. The segment of Santa Fe south of 13<sup>th</sup> Street is an improved curb and gutter street. Other services are available or can be extended.

CONFORMANCE TO PLANS/POLICIES: The 2020 Future Land Use Concept map contained in the Midtown Plan indicates this site is appropriate for multi-unit/potential park uses. The redevelopment policies contained in the plan state that Santa Fe was to become a buffer area. Specifically, the plan states the need to provide for the acquisition of lands that may become part of the Santa Fe open space buffer as they become available, condemn all dilapidated structures between Murdock and 18<sup>th</sup> Street, ensure that temporary interim uses exclude heavy industrial uses and encourage the development of infill multi-unit housing as an alternative to preferred open space/park uses (page 46, Midtown Plan).

The 2030 Wichita Functional Land Use Guide Map indicates the site is appropriate for urban residential uses.

**<u>RECOMMENDATION</u>**: Based upon information available prior to the public hearings, planning staff recommends that the request be <u>APPROVED</u>.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: All of the lots facing Santa Fe between 13<sup>th</sup> Street and 14<sup>th</sup> Street are zoned LI except the subject site. Only one other lot in that half-block other than the applicants is zoned B and it fronts 14<sup>th</sup> Street. Less than half of the block face is developed with residential uses; the remainder of the block is used for warehousing or other nonresidential uses.
- 2. The suitability of the subject property for the uses to which it has been restricted: Warehousing is not a permitted use in the B district, pretty much rendering the existing building on the lot unusable. Garages on residentially zoned lots are legally permitted only if there is a principal residence. The majority of the existing lots on the block face are not currently used for residential purposes and are zoned LI, making the B zoning inappropriate. Also, the site is developed with a warehouse building that probably cannot economically be converted to a use permitted in the B district.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of LI zoning should not detrimentally impact nearby property owners since it was previously zoned LI and all of the lots facing Santa Fe are already zoned LI.

- 4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably be an economic hardship on the property owner.
- 5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested change is not consistent with the plan maps noted above; however the residential designation was predicated on beautification efforts associated with elevating the railroad tracks. It would be a very unusual circumstance if an owner or investor would be willing to invest in this lot for a use allowed only in the B district.
- 6. Impact of the proposed development on community facilities: None identified.

**DALE MILLER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **HENTZEN** seconded the motion, and it carried (11-0).

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**Case No.:** CON2010-14 - Justin P. Clark Living Trust (Owner) Alan Beam (Applicant) Request City Conditional Use request to permit vehicle and equipment sales, outdoor, on property zoned LC Limited Commercial on property described as;

Lot 1, Gibbs Third Addition, Wichita, Sedgwick County, Kansas, generally located on the southeast corner of S. Seneca Street and W. 29th Street South (3006 S. Seneca Street).

**BACKGROUND:** The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on Lot 1 of the Gibbs 3<sup>rd</sup> Addition, which is currently, zoned LC Limited Commercial ("LC"). The site is located at the southeast corner of West 29<sup>th</sup> Street South and South Seneca Street. The subject site is developed with a three-bay door garage/retail/office, used for limited car and light truck repair. The applicant proposes to retain the site's limited vehicle repair shop, which is permitted by right, and sell pre-owned vehicles. Per the Unified Zoning Code (UZC), outdoor vehicle and equipment sales may be permitted with a Conditional Use in the LC zoning district.

The applicant's site plan shows the existing garage/retail/office structure; one proposed drive onto South Seneca Street and one drive onto 29<sup>th</sup> Street South; proposed vehicle circulation and the parking/display area. The site plan also shows the location of a proposed building to be placed on the east side of the existing building, and an area near the proposed building to be paved. If approved, the applicant needs to provide a revised site plan giving more detail including any proposed light poles, solid screening around trash receptacle(s), required screening around the outside and landscaping.

The existing office-sales building has bay doors on the north side of the building and is currently listed by the appraiser's office as a service garage. Per the UZC Art IV, Sec IV-A, "Off-Street Parking Standards," the 6,050-square foot office-sales-vehicle repair building would trigger the need for at least thirteen parking spaces. The UZC also requires two parking spaces for the first 10,000-square feet of lot area used for sales, display or storage purposes, plus one parking space for each 10,000-square feet of lot area used for sales, display or storage purposes thereafter; the applicant has not given that square footage. Dimensions on the vehicle display parking spaces are not given, however the site plan shows most of the display area to be between 60 to 70 feet deep and if the straight-in (versus angled) display spaces are 18 feet deep, the applicant would have at least 24 feet for vehicle circulation (accounting for parking on both sides of drive aisle); the Fire Department prefers a 15 foot minimum distance for their emergency service vehicles. Parking in the LC zoning district can be in setbacks, except for that portion of the setback required for landscaping.

Property east of the subject site is zoned B Multi-family Residential ("B") and is developed with an apartment complex. Property to the west of the subject site, across Seneca Street, is zoned SF-5 Single-family Residential ("SF-5") and GO General Office ("GO) and is developed with a single-family residence and an office. Property south of the subject site is zoned LC Limited Commercial ("LC") and is developed with a restaurant and retail strip center. Property north of the subject site is zoned LC and NR Neighborhood Retail ("NR") and is developed with a restaurant and retail strip center.

<u>CASE HISTORY</u>: The subject property is platted as Lot 1 of the Gibbs 3<sup>rd</sup> Addition, which was recorded with the Register of Deeds February 28, 1969. The existing structure on the site was originally built in 1969, while an expansion to the structure appears to have been completed in 1986.

# **ADJACENT ZONING AND LAND USE:**

NORTH: LC & NR Restaurant & retail store

SOUTH: LC Restaurant

EAST: B Apartment Complex

WEST: SF-5 Residence

<u>PUBLIC SERVICES</u>: This subject property has access to South Seneca, a 5-lane principal arterial street along the west property line and West 29<sup>th</sup> Street, a two-lane, local street along the north property line. The current traffic volumes along South Seneca at this location are approximately 35,690 vehicles per day. Municipal water and sewer services are currently provided to the subject property. The sewer line is located along the east property line of subject site, while the water main is located along the north property line of the subject site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as "Local Commercial." "This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. An example of the range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing." In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses," as well as Strategy III.B.6 recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

Commercial Locational Guideline #1 of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. Commercial Locational Guidelines #3 recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; #5 commercially-generated traffic should not feed directly onto local residential streets.

In the past, the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPC has also recommended that buildings that had in the past been used for automobile activities, such as gas stations, be considered as possible sites for car sales. The existing structure on the site was originally built in 1969, while an expansion to the structure appears to have been completed in 1986. Most recently, the structure has been used for an automotive repair use.

**RECOMMENDATION:** While the site does not entirely meet the Comprehensive Plan's criteria of locating car lots in areas where they are already clustered, it does match up with the MAPC's criteria of locating smaller car sales lots within sites that had previously been used for auto related businesses. Introduction of a car sales lot into an area can lead to other car sales lots and this is an issue that must be addressed on a site-by-site basis with a Conditional Use application. Usually, but not always, on an application for a Conditional Use for a small site for car sales, the car sales are the only business to operate on the site. In this case the applicant proposes to retain the permitted by right limited vehicle repair business, while operating a car sales lot. Based on the information available prior to the public hearing, MAPD staff recommends the application be <u>APPROVED</u>. Recommended conditions of approval include:

- 1) Obtain all permits and inspection as required by OCI. All development will be per City Code including landscaping, code compliance and any other applicable standards.
- 2) In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks, as long as it continues to operate as a vehicle repair, limited garage. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pickups are permitted.
- 3) No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
- 4) The applicant shall submit a revised site plan for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards, within one year of approval by the MAPC or the City Council. The site will be developed according to the revised site plan.
- 5) The applicant shall install and maintain landscaping in accordance with the landscape plan submitted with the revised site plan, within one year of approval by the MAPC or the City Council. The landscaping plan will be reviewed and approved by the Planning Director, prior to issuance of any permits. The applicant will remove all asphalt needed to come into compliance with the Landscape Ordinance and to ensure that development does not encroach into right-of-way.
- A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
- 7) No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
- 8) There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
- 9) No outdoor amplification system shall be permitted.
- 10) No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area.
- The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 12 feet, including the base, and directed onto the site and away from the residential development abutting the west side of the site.

- All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
- The entrances shall be reviewed and approved by the Traffic Engineer. This must be provided to the City, prior to the Conditional Use being finalized. The applicant shall guarantee the closure of all but the approved entrances according to City standards.
- All improvements shall be completed within one year of the approval of the Conditional Use by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
- 15) The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- 16) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Property east of the subject site is zoned B Multi-family Residential ("B") and is developed with an apartment complex. Property to the west of the subject site, across Seneca Street, is zoned SF-5 Single-family Residential ("SF-5") and GO General Office ("GO) and is developed with a single-family residence and an office. Property south of the subject site is zoned LC Limited Commercial ("LC") and is developed with a restaurant and retail strip center. Property north of the subject site is zoned LC and NR Neighborhood Retail ("NR") and is developed with a restaurant and retail strip center.
- 2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LC. The property is suitable for the commercial uses to which it has been restricted, including its current use as vehicle repair, limited.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Vehicle sales on a site this size when developed with the Conditional Use, will have a minimum of negative effect on the area and at best improve the property, with the application of access control, landscaping, screening and the other conditions on the site.
- 4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area as "Local Commercial." "This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing." In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses," as well as Strategy III.B.6 recommends that traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.

5. <u>Impact on Community Facilities:</u> All public facilities are available. Existing road facilities are adequate.

**DERRICK SLOCUM**, Planning Staff presented the Staff Report. He said staff has agreed to a revision of Condition #2 to remove the wording "as long as it continues to operate as a vehicle repair limited garage" and to remove motorcycles and scooters from the list of prohibited sales or rentals. He said the applicant would eventually like to have vehicle repair at the site. He reported that DAB IV approved the revised request 6-0 and that there were no comments from the public at the DAB meeting.

**HILLMAN** commented that motorcycles and scooters were not standard items for vehicle used car sales.

**SLOCUM** said no, and added that Conditional Uses can be tweaked on a case-by-case-basis.

**DIRECTOR SCHLEGEL** clarified that DAB IV was agreeable to the modified conditions.

**SLOCUM** responded yes, DAB IV recommended approval of the application with the modifications.

ALAN BEAM, 801 NORTH BURMOC ROAD, BURRTON, KS 67020, APPLICANT said they are agreeable to the modifications made by staff.

**HILLMAN** asked if the applicant currently offers vehicle repair at the location.

**BEAM** said the location has a three-bay shop. He said they are negotiating an agreement to rent the entire facility, primarily for car sales with a substantial shop in back. He said he currently doesn't have shop employees hired and that he is in the process of obtaining a dealer's license for used cars only.

**MOTION:** To approve subject to staff recommendation as revised.

**DENNIS** moved, **KLAUSMEYER** seconded the motion, and it carried (12-0).

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7. <u>Case No.: CON2010-16</u> - Rene & Susanna Aaron Request City Conditional Use for an accessory apartment on property zoned TF-3 Two-Family Residential on property described as;

Lots 10 and 12 on Orchard Street, Country Club Place Addition to Wichita, Sedgwick County, Kansas, generally located east of Hillside Avenue, north of Murdock Avenue, east of Vassar Avenue on the north side of Orchard Street.

**BACKGROUND:** The applicants are requesting a Conditional Use to allow an accessory apartment on Lots 10 & 12, Country Club Place Addition; 3412 E Orchard Street. The approximately 6,416-square foot subject site is zoned TF-3 Two-Family Residential ("TF-3"). Because the proposed additional/separate structure will contain a kitchen, a bathroom and sleeping quarters, it is classified as dwelling unit (Unified Zoning Code, "UZC", Art. II, Sec. II-B. 4.j.) and thus requires Conditional Use approval for an accessory apartment in the TF-3 zoning district (Art III., Sec III.-D.). The applicants have been advised that converting their single-family residence into a duplex could be done by right in the TF-3 zoning district. A member of the owners' family will live in the accessory apartment.

The UZC's Art. III, Sec. III-D. 6.a., Conditional Use requirements for an accessory apartment:

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling.
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling

and with the character of the neighborhood.

- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.
- (d) The water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

The site plan submitted by the applicants shows the detached, accessory apartment located behind their single-family residence; UZC, Art. III, Sec. III-D 7. e. (7), a detached accessory structure must be located at least three feet from the principle structure; this needs to be confirmed on a revised site plan. The site plan shows the accessory apartment to be located three and one-half feet from the interior side property line and eight feet from the rear property line; UZC, Art. III, Sec. III-D 7. e. (3), permits an accessory structure to be located three feet from the interior side property line. Although the UZC, Art. III, Sec. III-D 7. e. (1), permits an accessory structure to be located five feet from the rear property line, the applicants show it to be located eight feet from the rear property line. Country Club Place Addition has no platted easements, but there is a sewer line running parallel to the rear property line of the site; either an easement dedicated by separate instrument or an easement by prescription must be confirmed by a revised site plan. The applicant has stated that the accessory apartment will be built on top of a newly constructed garage, as shown on the current site plan; per UZC, Art. III, Sec. III-D. 7. e. (6) the detached accessory structure cannot exceed 60% of the TF-3's zoning district's allowable height of 35 feet.

Built in 1934, the applicants' current residence is a one-story, stick frame, lap siding, building, approximately 1,600 square feet in size. No square footage, no building materials, and no garage are shown for the proposed accessory apartment; however, in order to be considered an accessory residential structure, the requested apartment must have less square footage than the principal structure, as well as meet the already noted UZC's four requirements.

The site is located in a predominately TF-3 zoned single-family residential neighborhood, sandwiched between the GO General Office ("GO") and B Multi-Family Residential ("B") zoned Wesley Hospital complex on the west and the TF-3 zoned 146-acre MacDonald Municipal Golf Course on the east. Wesley is the largest development (after the golf course) and employer in the area. Most of the houses in the area were built in the 1920s and the 1930s. The TF-3 zoned apartment, located south of the site, across Orchard, is a converted school house (Alcott school, built 1926 & 1959); CON2007-33 a Conditional Use for multi-family residential in the TF-3 zoning district.

**CASE HISTORY:** The subject site is located on Lots 10 & 12, the Country Club Place Addition, which was recorded with the Register of Deeds February 15, 1923.

#### ADJACENT ZONING AND LAND USE:

NORTH: TF-3 Single-family residences

SOUTH: TF-3 Apartments

EAST: TF-3 Single-family residences, municipal golf course

WEST: TF-3, GO, B Hospital complex, single-family residences, children's home

**PUBLIC SERVICES:** All public services are available. Murdock Avenue at this location is classified as an urban collector. Orchard and Vassar Avenues are local streets. Orchard has 50-feet of right-of-way at this location, but runs only between Vassar and Yale Avenues, a short block in front of the site, with no immediate chances for extending east or west, because of MacDonald golf course and the Wesley complex respectively. The site's only access is onto Orchard.

<u>CONFORMANCE TO PLANS/POLICIES:</u> The "2030 Wichita Functional Land Use Guide" of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as "Urban Residential."

The Urban Residential category reflects the full diversity of residential development densities found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category. The site's current TF-3 zoning is intended to accommodate moderate-density single-family and duplex residential development, as well as very limited density multi-family development and other complementary land uses. The site's current use as a single-family residence and its TF-3 zoning comply with the Urban Residential category. Although the requested accessory apartment is an appropriate housing type for the Urban Residential category (as well as the site's TF-3 zoning), this appears to be the first accessory apartment in the area. However, the conversion of the TF-3 zoned Alcott school to an apartment (CON2007-33) did introduce a higher development density to the immediate area.

The site is also located within the "Central Northeast Area Plan" (Ord #46-657 & Resolution #158-05), which has as an overall goal of improving the housing stock for this area, including increasing rental property. The proposed Conditional Use for an accessory apartment may or may not improve the housing stock in the area, much of that will depend on maintenance of the property. The Conditional Use requirement that the appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood should help maintain the current housing stock. Although the intended occupant of the accessory apartment is a member of the owners' family (the owners live on the subject site), the UZC does not prevent it from being rented out to anyone, such as an employee of Wesley.

**RECOMMENDATION:** Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

- 1. The accessory apartment shall be subject to all requirements of Art III, Sec III-D 6.a. of the Unified Zoning Code; including the appearance of the accessory apartment shall be compatible with the primary residence and shall not be larger in floor area than the principal structure. Provide Planning with a revised site plan.
- 2. The applicant shall obtain all applicable permits, including but not limited to building, health, and zoning.
- 3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The site is located in a predominately TF-3 zoned single-family residential neighborhood, sandwiched between the GO General Office "GO" and B Multi-Family Residential "B" zoned Wesley Hospital complex on the west and the TF-3 zoned 146-acre MacDonald Municipal Golf Course on the east. Wesley is the largest development (after the golf course) and employer in the area. Most of the houses in the area were built in the 1920s and the 1930s. The TF-3 zoned apartment, located south of the site, across Orchard, is a converted school house; the Alcott school, built 1926 & 1959, CON2007-33 a Conditional Use for multi-family residential in the TF-3 zoning district.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site's current use as a single-family residence is appropriate for its TF-3 zoning and the neighborhood. Accessory apartments are allowed as a Conditional Use in TF-3 zoning provided the applicant and the site meet the UZC's and the golden rules standards. The application and the site appear

to meet these criteria.

- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Although this appears to be the first accessory apartment in the area, the conversion of the Alcott school to an apartment (CON2007-33) did introduce a higher development density to the immediate area. Any detrimental effect should be minimized by the conditions for accessory apartments by the UZC and the Conditional Use.
- 4. Conformance of the requested change to adopted or recognized Plans/Policies: The "2030 Wichita Functional Land Use Guide" of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as "Urban Residential." The Urban Residential category reflects the full diversity of residential development densities found in a large urban municipality. The site's current use as a single-family residence and its TF-3 zoning comply with the Urban Residential category. Although the requested accessory apartment is an appropriate housing type for the Urban Residential category (as well as the site's TF-3 zoning), this appears to be the first accessory apartment in the area. The UZC makes specific provision for accessory apartments in TF-3 zoning. This application appears to comply with all the provisions outlined in the UZC for accessory apartments.
- 5. Impact of the proposed development on community facilities: The applicants' request should have a minimal impact on community facilities. An increase in traffic will be minimal.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

JOHNSON moved, HENTZEN seconded the motion, and it carried (11-0).  The Metropolitan Area Planning Department informally adjourned at 1:50 p.m.
State of Kansas ) Sedgwick County ) SS
I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held or, is a true and correct copy of the minutes officially approved by such
Commission.
Given under my hand and official seal this day of, 2010.
John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan Area Planning Commission

(SEAL)